

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA

THIS MONDAY, THE 13TH DAY OF JULY, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

**SUIT NO: CV/1335/14
MOTION NO: M/2976/18**

BETWEEN:

**JEAN PAUL AND ASSOCIATES }JUDGMENT CREDITORS
CONSULTANCY LIMITED }**

AND

**1. ODIGBO PROPERTIES LIMITED }JUDGMENT DEBTORS
2. CHIKEZIE ODIGBO }**

AND

**1. DIAMOND BANK PLC } GARNISHEES
2. KEYSTONE BANK LTD }**

RULING

On **13th November 2017**, this court entered Judgment in favour of the Plaintiff/Judgment creditor against the defendants/judgment debtors in the sum of N5, 520, 000 (Five Million, Five Hundred and Twenty Thousand Naira) representing outstanding balance of payment due to the judgment creditor for agency and consultancy services, general damages and cost of the action.

Subsequently this court on 11th December, 2018 recorded a Garnishee Order Nisi against certain identified financial institutions on record including Diamond Bank Plc and Keystone Bank Plc, the 10th and 19th Garnishees respectively. Let me quickly add that most, if not all of the other Garnishees have been discharged.

In response to be order to show cause, **Diamond Bank** and **Keystone** filed affidavits donating grounds why the order nisi should not be made absolute. The Judgment creditor in response filed affidavits to these processes. I shall now consider the case as made out by the Garnishees separately.

Diamond Bank Plc filed the following processes, to wit:

1. Affidavit to show cause dated 4th March, 2019
2. Further and Better affidavit dated 28th March, 2019 and
3. Further and Better affidavit dated 26th September, 2019.

The first affidavit discloses that after they were served the order nisi, they conducted a search in there data base which revealed that the 1st Judgment Debtor does not maintain an account with them and that with respect to the 2nd Judgment Debtor, they have accounts similar to the name of the 2nd Judgment Debtor and they will require further particulars like his Account No, means of identification (National I.D Card, Drivers Licence, Voters Card, International Passport etc) to know whether the account with them indeed belongs to the 2nd Judgment debtor.

In the 2nd further affidavit, they averred that the Judgment Creditor furnished them with the witness statement on oath of 2nd Judgment Debtor with his passport on it together with a G.T Bank cheque signed by the 2nd Judgment Debtor and that with these documents, they again conducted a search in there data base but that the result show that the passport on the witness statement on oath of the 2nd Judgment Debtor and the signature on both the witness statement and the G.T.B cheque do no match with any of the accounts with name similar to that of 2nd Judgment Debtor. That this search revealed that the 2nd Judgment Debtor does not maintain an account with them.

The last affidavit filed by them reiterated the same position and in paragraph 4, they mentioned the accounts similar to the name of 2nd Judgment Debtor as follows:

“4.The following are the accounts with the names similar to the 2nd Judgment debtor with the Bank as detailed below:

- 1. EZENWA MADUBUIKE CHIKEZIE ODIGBO maintains account number 0002782585 with a Balance of N391,604.40.**
- 2. VAGINO CHIKEZIE ODIGBO maintains account number 0002903159 with a Balance of N5, 183.26.**
- 3. ODIGBO CHIKEZIE TONY, who is an ex-staff of the Bank, maintained account number 0003904232 with a Balance of N0.00.”**

The statements of accounts of these named accounts with the balance in each account indicated were attached even if they were not properly marked as exhibits. The account opening forms of Ezenwa Madubuike Chikezie and Vagino Chikezie Odigbo showing their passport photographs were equally attached. The third account is said to be that of their ex-staff and it has a zero balance.

What these processes filed by the 10th Garnishee show is the lack of clarity with respect to whether the 2nd Judgment Debtor really maintains an account with them. The Judgment creditor advanced the position in there counter affidavit that the 10th Garnishee is withholding information with respect to the Account of 2nd Judgment Debtor with them and that the Court should proceed to make the order nisi absolute.

Unfortunately for the Judgment Creditor, it does not appear to me that these arguments can be sustained in the light of the unchallenged averments in the affidavit of the 10th Garnishee. On the materials, they have stated clearly that a search in there data base revealed that they had similar names like that of the 2nd Judgment Debtor who had accounts with them and would require further particulars of the 2nd Judgment Debtor. When they were furnished with the sigend witness deposition of the 2nd Judgment Debtor with his passport and a copy of his signed G.T.B Cheque, they conducted further checks in there data base and there was no match. They then identified the accounts with them, attached the statements of account and the account opening forms of two of the accounts and

there clearly is no match with the 2nd Judgment Debtor on record. The third account had nothing in it to be attached even if the names were the same.

To the extent that the Judgment Creditor has no counter evidence to rebut or impugn the assertions of the 10th Garnishee, I don't think in the circumstances, any further burden should be placed on them to provide any other information beyond that they have disclosed. There is really nothing before me showing that they have not been forthright or that the 2nd Judgment Debtor indeed maintains an account with the 10th Garnishee.

In such very fluid and unclear circumstances, it will be difficult for the court to make the order nisi absolute against the 10th Garnishee on Record. The court as a court of justice cannot act on what is at best speculative evidence to sustain or grant the order absolute. That will neither be right or fair. In law, where facts averred to sustain a position is weak, tenuous or feeble as in this case, the implication is that there is no clear path way or firm basis to grant the relief(s) sought.

On the materials, the conclusion I have arrived at is that the Judgment Debtors do not maintain an account with the 7th and 10th Garnishees (Access/Diamond Bank) and they are hereby accordingly discharged.

Now with respect to the **19th Garnishee (Keystone Bank Plc)**, they filed the following processes:

1. Affidavit showing cause dated 4th February, 2019.
2. Affidavit showing cause dated 29th November, 2019.

The first affidavit above disclosed that after they were served with the order nisi, they conducted a search in their records and found that the 1st Judgment Debtor does not maintain an account with them but that there is an existing name similar to that of 2nd Judgment Debtor and that they would require further particulars of 2nd Judgment Debtor to confirm with certainty that the Account indeed belongs to him.

In the second further affidavit, and in response to the further particulars they were given, they now concluded that after searching their data base that the 2nd Judgment Debtor indeed maintains two accounts with them but that they had applied one of the accounts which was in credit to offset the debit balance in the other account. It may be necessary to allow the affidavit speak for itself as follows:

“5. That Mrs. Chozoba Orakwue, a Legal Officer in the employment of the Garnishee (Keystone Bank Ltd) informed me in our office on 28th November, 2019 at about 3:45 pm and I verily believe same as to be true and correct as follows:

(a) That in view of the 2nd judgment Debtor more and further particulars provided the Garnishee’s database revealed that the 2nd judgment Debtor maintains accounts with the Bank as tabled below:

S/N	Account Name	Account Number	Account Balance
1.	Odigbo T. Chikezie	1000231803	N8,575,465.97 Debit Balance
2.	Odigbo T. Chikezie	1002978630	\$51.24 Credit Balance

(b) That the certified true copies of the 2nd judgment Debtor’s statement of account detailed and tabled above is hereby attached and marked as Exhibits A and B respectively.

(c) That the Bank has right to set off the debit balance in account No. 1000231803 against the credit balance in account No. 1000231803 and the Bank is hereby exercised its right by setting same off.

(d) That it will serve the interest of justice to discharge the Garnishee from the entire proceedings.”

I have carefully gone through the above averments and the statements of Account, **Exhibits A and B** attached and there is nothing in these documents showing when the 2nd Judgment Debtors account said to be in credit was used to offset his alleged indebtedness on the other account.

The 19th Garnishee here did not offer any explanations with respect to the entries in the attached **Exhibits A and B**. **Exhibit A** would appear to be a domiciliary account said to contain a balance of **\$151.24**. The other account attached as **Exhibit B** has about seven (7) columns. The columns for Date, Value date, Reference, Debit and Credit are completely vacant. The Narration Column has in it written “opening and closing balance” while the balance column contains or shows a particular amount and one then wonders what to make of this Exhibit. Most importantly there is nothing in any of these documents showing or suggesting any set-off as advanced by the 19th Garnishee. Indeed there is no scintilla of evidence to support this assertion. Furthermore, there is nothing showing that the 2nd Judgment Debtor is indebted to the 19th Garnishee providing a basis for the alleged set off. The point must be made clear that the court has no obligation to engage in any dangerous speculative exercise to determine the import of **Exhibits A and B**. It was the duty of the 19th Garnishee to creditably support the position they have advanced by credible and clear evidence. The principle is settled that a bank statement of account is on its own not sufficient explanation of debit and lodgment in a customer’s account to charge the customer with liability for the overall debit balance shown in the statement of account. There has to clear evidence disclosing how the debit balance was arrived at. See **Yusuf V. A.C.B. (1986)1-2 S.C. 49; Wema Bank Plc V. Alhaji Idowu Fasasi Osilaru(2007)LPELR-8960**

In this case, the 19th Garnishee just attached **Exhibits A and B** which they referred to as Statements of Account without explaining or showing:

1. The **account** with the **debit balance** and how it accrued.
2. The account in **credit** and when it was used to offset the account with the debit balance.

It is clear that the Bank here is not forthcoming or forthright with respect to the account of 2nd Judgment Debtor with them. **Exhibit “B”** for example showing no date(s) at all with respect to any transaction is a clear indication that it was simply hurriedly prepared to attempt to pool wool across the face of court. This then speaks to the fact that the bank appears to be oblivious of its legal duties and responsibilities in a Garnishee proceeding which is a special proceeding demanding exercise of utmost good faith and transparency by all.

The first point to underscore is that this court as stated earlier granted or made the order nisi on 11th December, 2018. The service of the order nisi on the 19th Garnishee in this case binds the debt in the hands of the Garnishee such that any payment of the debt to the judgment debtor or its alienation, without leave of court shall be null and void. Any tampering with the said funds after the service of the order nisi is simply a futile and idle exercise. Indeed any attempt to transfer or tamper with the funds subject of the order nisi would be null and void as already pointed out.

Secondly and no less important is that the 19th Garnishee has no business trying to protect the Judgment Debtor by seeking to subvert the process by underhand tactics by failing to provide full facts relating to the account(s) of the Judgment debtor(s) with them. The growing tendency nowadays for Garnishees actively trying to shield the Judgment Debtor(s) from their obligations must be deprecated in the strongest of terms. I call in aid here the admonition of the Court of Appeal in **Oceanic Bank Plc V. Oladepo & Anor (2012)LPELR-19670(CA)** where Ita Mbaba J.C.A stated instructively as follows:

“...it is not the business of a Garnishee to undertake to play the role of an advocate for a judgment debtor by trying to shield and protect the money of the judgment debtor...”

The above admonition is clear and unambiguous.

On the whole, there is nothing of significance in the affidavits of the **19th Garnishee** preventing the court from making absolute the order nisi granted on 11th December, 2018. The allegation that the sum of ₦8,575,465.97 in the account of 2nd Judgment Debtor in account No:1000231803 was used as a set off

by the Bank is simply a red-herring that has not been proven, established or even demonstrated by the Garnishee. I therefore consider their contention as a spurious assertion completely lacking substance and credibility and is accordingly dismissed.

The bottom line is that the two accounts of the 2nd Judgment Debtor with the 19th Garnishee are clearly in credit and sufficient to satisfy the Judgment debt in this case.

Accordingly, I hereby proceed to make absolute against **Keystone Bank**, the order nisi made on 11th December 2018 for payment to the Judgment Creditor forthwith the due sums covered by the Judgment of court in the sum of **N5,520,000** including the cost of this garnishee proceedings.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. E.R Opara, Esq., with Eunice Egbuche for the Judgment/Creditor.**
- 2. Benedict Onuh, Esq., for the 7th and 10th Garnishees (Access Bank Plc and Diamond Bank Plc).**
- 3. Abubakar Bala Danmamman, Esq., for the 19th Garnishee (Keystone Bank Ltd).**